IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5567 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

A R SAIYED

Appearance:

MR HARDIK C RAWAL for Petitioner

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 01/08/2000

ORAL JUDGEMENT

The respondent A.R. Syed was working as conductor under GSRTC, and while in service a surprise check was made in the route where respondent was performing his duty. During surprise check, it was found

that the conductor has realised bus fare from passengers but he has not issued tickets for them. For this misconduct, disciplinary proceeding was initiated and during inquiry the charges were proved before the Inquiry Officer. Disciplinary Authority, after considering Report of the Inquiry Officer, and after considering papers and documents, dismissed the respondent from service by an order dated 28-2-1984. After the dismissal, respondent did not take any steps for long time and only in 1995 he raised the industrial dispute and the dispute was referred to the Industrial Tribunal, Vadodara. The Industrial Tribunal registered the case being Reference (IT) No: 37 of 1995. Before the reference was made to the Industrial Tribunal, respondent reached his date of retirement on 31-7-1989. The Industrial Tribunal after taking evidence and after hearing parties, directed the petitioner Corporation for giving retiral benefits to the respondent and also allowed 50 % back wages from the date of dismissal to the date of superannuation, that is from 28-12-1983 to 31-7-1989. Having felt aggrieved by the order of the Industrial Tribunal, the Corporation filed this petition for quashing judgment & award passed by the Industrial Tribunal, Vadodara on 8-10-1999 in Reference No (IT) 37/95.

2. Mr. H.C. Rawal, learned counsel appearing on behalf of the Corporation very fairly submitted that, the Industrial Tribunal has found that there is some irregularity in the departmental proceeding, and therefore the Tribunal has directed the Corporation for payment of retiral benefits to the respondent, but taking a liberal view the Tribunal has passed an order for payment of 50 % back wages. Mr. Rawal learned counsel for the Corporation has submitted that, after the dismissal of respondent on 28-12-1983, he remained silent for more than ten years and only in 1995 he moved the authority for referring the dispute to the Industrial Tribunal. Mr. Rawal further submitted that, the Government should not have referred the dispute to the Tribunal after a lapse of ten years, and the Tribunal has committed an error in entertaining the reference after such a long period of ten years. Mr. Rawal further submitted that, the relief claimed by the respondent has been hopelessly time barred, and therefore the Tribunal should have held that, no relief can be granted on the ground that the matter has already become time barred. Mr. Rawal consequently submitted that the Tribunal has committed an error in giving the relief to the respondent, who was sleeping over his right for more than ten years.

3. Mr. G.K. Rathod, learned counsel appearing on behalf of the respondent submitted that the Tribunal has come to a definite finding that, there was some irregularity in the departmental proceeding and therefore the Tribunal has passed an order for payment of retiral benefits, and also passed order for payment of 50 % back wages. Mr. Rathod, learned counsel accordingly submitted that, when the Tribunal has come to a definite finding, this Court should not interfere with such finding in a writ jurisdiction.

4. I have considered submission of learned counsel of both the parties. It is an admitted fact that, there was some irregularity in the departmental proceedings. It also appears that the respondent after his dismissal from service did not move any authority for long ten years and his dispute has been referred in the year 1995, that is after lapse of more than ten years. There is nothing on record to show that during the period from 28-12-1983 to 31-7-1989 respondent was unemployed or he did not earn any income during this period. The petitioner Corporation did not receive any service from the respondent during this period. Therefore, I am of the view that the Industrial Tribunal has taken a too lenient view in granting 50 % back wages for the interregnum period. Since the Corporation did not get any service from the respondent during the period from 28-12-1983 to 31-7-1989, I am of the view that, payment of 25 % back wages will meet the ends of justice. However, I do not interfere with the order passed by the Tribunal regarding payment of retiral benefits. Order of the Tribunal regarding payment of retiral benefits to the respondent is confirmed. However he may be paid only 25% of the back wages during period from 28-12-1983 to 31-7-1989. With the aforesaid modification in the judgment & award of the Industrial Tribunal, Vadodara, present petition is allowed in part. Rule made absolute to the aforesaid extent. I make, no order as to costs.

Dt: 1-8-2000 (P.K. Sarkar, J)

/vgn.